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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/735,188

12/12/2003

Georgios Stamatas

J&J-5092

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27777 7590 03/12/2010
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EXAMINER

CHENG, JACQUELINE

ART UNIT

PAPER NUMBER

3768

NOTIFICATION DATE

DELIVERY MODE

03/12/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jnjuspatent@corus.jnj.com
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| | | | |
|------------------------------|--------------------------------------|----------------------------------------|--|
| Office Action Summary | Application No. 10/735,188 | Applicant(s) STAMATAS ET AL. | |
| | Examiner JACQUELINE CHENG | Art Unit 3768 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, filed December 16, 2009, with respect to the claim have been considered but are moot in view of the new ground(s) of rejection. The examiner would also like to clarify for the applicant that in the response to arguments section of the previous office action dated September 16, 2009 the examiner meant for when Leffell (US 4,894,547) is being used to study various chemical compounds such as tryptophan *and* (not *or*) NADH it is obvious for Leffell to radiate at the wavelengths that induce tryptophan and NADH.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 11-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trepagnier (US 2002/0016534 A1) in view of Leffell (US 4,894,547).

4. Trepagnier teaches a method of determining the effect of a treatment to the skin of a subject by measuring factors that assess changes of structural matrix of the skin, cells of skin, and other cellular components reflective of metabolic activity (cellular components reflective of the health of the skin) such as tryptophan and NADH (paragraph 0057, 0058, 0116). To measure tryptophan and NADH respectively, Trepagnier teaches directing light in the about 295 nm range

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causing the skin to fluoresce at approximately 345 nm, and directing light in the about 370 nm range causing the skin to fluoresce at approximately 420-520 nm (paragraph 0057) (exposing at about 295 nm and about 390-410 nm and measuring at about 340 nm and 440 nm) and calculating relative peak ratios from the measured fluorescence (paragraph 0058, 0126). The results can then be compared to measurements of developed standards or surrounding normal tissue for use in measuring treatment related changes (paragraph 01116). Trepagnier does not explicitly disclose the particulars of how to perform this method of measuring treatment related change. In the same field of endeavor of exposing skin to ultraviolet light and measuring the fluorescence, Leffell discloses directing light at predetermined ultraviolet wavelength ranges at sun-exposed skin such as the forehead (skin having undergone treatment), measuring fluorescence emitted, and creating a ratio of the measured fluorescent intensities. This ratio is then compared to a ratio of the fluorescent intensity that is induced from directing light at a predetermined ultraviolet wavelength at non-sun-exposed skin such as the buttocks (skin not exposed to the treatment). By comparing the ratios one can determine the effect of the sun has on the skin (effect of skin treatment) (col. 2 line 15-20, col. 2 line 53-68, col. 4 line 56-60). Leffell also further discloses that besides sun exposed skin, his invention can be used to monitor improvement in skin relating to treatment (col. 9 line 15-25). In order to monitor improvement in skin it would be obvious that one must monitor the same area in order to be able to tell how the skin improves over time.

Conclusion

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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JACQUELINE CHENG whose telephone number is (571)272-5596. The examiner can normally be reached on M-F 10:00-6:30.

6. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le can be reached on 571-272-0823. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

7. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JC

/Long V Le/
Supervisory Patent Examiner, Art Unit 3768